United Nations A/C.6/58/SR.10

General Assembly
Fifty-eighth session

Official Records

Distr.: General
30 November 2005
English
Original: French

Sixth Committee

Summary record of the 10th meeting
Held at Headquarters, New York, on Monday, 20 October 2003, at 3 p.m.

Chairman: Mr. Baja ..... (Philippines)

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The meeting was called to order at 3 p.m.

Agenda item 154: International Criminal Court (*continued*) (A/58/372)

1. **Mr. Hahn** Dyung-Jae (Republic of Korea) welcomed the fact that the Court was now operational. The next few years, in which the first cases would come up for trial, would probably be the most difficult ones for the Court, and it was therefore imperative that the international community continue to give it all necessary assistance. His delegation unreservedly supported the pursuance of cooperation between the United Nations and the Court.

2. Since the establishment of the Court, conflicts had multiplied and worsened, with innocent civilians being targeted all the time. In such a context, the Court was called upon to seek new means of preventing the most serious crimes and to do everything it could to ensure that those who committed them were punished.

3. In order that impunity should at last be ended worldwide, States which were not yet parties to the Rome Statute should accede to it as soon as possible and those which were already parties should adopt the legal provisions necessary for its implementation. Those in need of technical assistance should receive it. Furthermore, it was desirable that the Special Working Group on the crime of aggression should complete its work in the near future.

4. The Republic of Korea had ratified the Rome Statute, and the legislation necessary for its implementation was currently being drafted. His Government continued to participate actively in international activities for the promotion and dissemination of international humanitarian law. In June 2003 it had hosted in Seoul a meeting of the Asian-African Legal Consultative Committee, during which it had organized a special meeting on international law and armed conflicts and had promoted the adoption of a resolution exhorting the States members of that Committee to join the Rome Statute as early as possible.

5. **Ms. Kalema** (Uganda) welcomed the coming into operation of all the elements necessary for the functioning of the Court, as well as the growing number of ratifications of the Rome Statute. She urged States which had not yet done so to seriously consider ratifying the Statute so that the Court might become truly universal, and drew the attention of those who feared a politicization of the Court's activities to the guarantees provided in the Statute.

6. Uganda was among the countries for which the Statute had come into force at the first Assembly of States Parties, but for budgetary reasons it had not yet been able to incorporate the Statute in the national legislation. It hoped to benefit from the assistance of more experienced and wealthier countries in setting up a legal framework guaranteeing the complementarity of jurisdiction of the national courts and the Court.

7. Her Government hoped that in the election of the second Deputy Prosecutor priority would be given to African candidates, so that a proper balance between regions might be re-established.

8. As regards the investigations and prosecutions upon which the Prosecutor said he was ready to embark in connection with the events that had taken place in Ituri (Democratic Republic of the Congo), her country was willing to cooperate whenever asked to do so, but hoped that all information would be duly verified and that no credence would be given to unfounded allegations motivated by the wish to settle scores.

9. Her delegation welcomed the establishment of a permanent secretariat of the Assembly of States Parties, a process in which the United Nations had played an important part and towards which the non-governmental organizations, especially the NGO Coalition for an International Criminal Court, had greatly contributed, and hoped that such cooperation would continue in future. It was, however, aware of the difficulties that lay ahead. In particular, the Court had to be made better known to the public at large and a greater number of States had to be persuaded to accede to the Rome Statute. Support and commitment on the part of all Member States were indispensable, for only a Court that was truly effective could end the culture of impunity and, by so doing, contribute towards the maintenance of international peace and security.

10. **Ms. Ramoutar** (Trinidad and Tobago), speaking on behalf of the fourteen members of the Caribbean Community (CARICOM), who were also Members of the United Nations, welcomed the establishment of the Court and noted with satisfaction that it was now in a position to try persons accused of crimes that fell within its jurisdiction, which meant that such persons would no longer be able to enjoy immunity. While the

special tribunals created by the Security Council had made it possible to prosecute the perpetrators of crimes committed under certain circumstances, the time had come to institute a permanent court which, by its very existence, would play a dissuasive role.

11. All countries had to recognize the Court's jurisdiction if genocide and crimes against humanity were to disappear from the world. True, the number of States Parties had risen, but only when a majority of States had ratified the Statute or had acceded thereto would the court be fully able to discharge its duties. The CARICOM countries therefore urged all States which had not yet done so to take the necessary steps to become parties to the Statute, as they themselves had undertaken to do at their latest summit in July 2003.

12. The Court must be able to count upon the cooperation of all States, especially in connection with investigations, the serving of arrest warrants, the arrest of suspects and the execution of penalties. States Parties were therefore called upon, as a matter of priority, to enact such national laws as would enable them to cooperate with the Court. Once the Court was operating effectively, with the international community's support, it would become clear that no one was above the law and that all perpetrators of atrocities would be brought to justice at either the national or the international level by virtue of the principle of complementarity according to which the Court would only deal with cases in which States could not or did not wish to prosecute and only under the conditions spelled out in the Rome Statute.

13. The CARICOM countries thanked the Office of Legal Affairs, and particularly the Codification Division, for the excellent secretariat services they had provided, and hoped that the transition to the permanent Court secretariat would go forward smoothly. Given the Court's potential role in maintaining international peace and security alongside the United Nations, they also hoped that consultations between the United Nations and the Court on the agreement governing their relations would begin shortly.

14. Confident that the first prosecutions, which might begin in the near future, would demonstrate the effectiveness of the many guarantees provided in the Rome Statute and would dissipate the fears of certain States, the CARICOM countries reaffirmed their support for the International Criminal Court and their attachment to the ideals upon which it was founded.

15. **Mr. Mukongo Ngay** (Democratic Republic of the Congo) said that his country, which was emerging from a long and devastating war during which mass, gross and systematic violations of international humanitarian law and human rights had been perpetrated, would know peace and stability only when the crimes committed and the identity of their perpetrators had been brought to light and the victims had obtained justice. But the rule of law was predicated on a judicial system that was just, reliable, morally sound and effective, which was something the Democratic Republic of the Congo – a State in transition that was only just emerging from a grievous conflict – could not ensure alone. The international community must shoulder part of the responsibility by providing the technical and financial help the country needed in order to fulfil its programme of combating impunity and promoting justice and the rule of law.

16. As regards crimes committed before 1 July 2002, which fell outside the jurisdiction of the International Criminal Court, it was desirable that the international community decide to establish an international criminal tribunal for the Democratic Republic of the Congo or, failing that, a special criminal tribunal of the type set up for Sierra Leone.

17. His country meant to take advantage of the prevention and suppression mechanism represented by the International Criminal Court. Those who continued to massacre civilian populations and to violate human rights and international humanitarian law would no longer be able to bank on impunity, and those who might be tempted to commit such crimes in future would be dissuaded by the risk of prosecution.

18. Referring more particularly to acts recently committed in Ituri, he said that his Government welcomed the Prosecutor's declared intention to open an investigation. It would make all necessary arrangements to provide the Prosecutor with the collaboration and cooperation he would require. However, mindful of the principle of complementarity, it reserved the right to refer cases to the national courts.

19. Referral to the Court or to a criminal court of the Democratic Republic of the Congo should entail not only the prosecution of the perpetrators of the most serious crimes, wherever they might be and whatever

their nationality, but also just and equitable reparations to the victims for damage suffered in five years of a war of aggression. Paragraph 14 of Security Council resolution 1304 (2000), which indicated that the aggressor countries should make reparation for the loss of life and the property damage they had wrought in Kisangani, constituted a legal basis for such reparations.

20. His delegation reaffirmed its support for the International Criminal Court, whose permanent nature and independence from the Security Council were guarantees of success. The Rome Statute must be observed to the letter in the interest of dispelling any suspicion of political deviation or partiality. Lastly, he thanked the Secretary-General and the Secretariat of the United Nations for their support in the establishment of the Court.

21. **Mr. Balarezo** (Peru), speaking on behalf of the 19 States members of the Rio Group, welcomed the considerable progress achieved in connection with the International Criminal Court, the Assembly of States Parties having elected a representative group of judges as well as the Prosecutor, Deputy Prosecutor and Registrar and eminent persons of international standing having agreed to serve as members of the Board of Directors of the Victims Trust Fund. The Court had also reinforced its administrative structure at The Hague. As for actual criminal proceedings, the Prosecutor had announced an investigation and possible prosecutions in connection with events in the Democratic Republic of the Congo, which could signal the end of impunity and thus have a dissuasive effect.

22. The Court enhanced the international legal system and supplemented the means available for combating the most serious infringements of international law which the international community was duty bound to suppress, in particular the crime of genocide, war crimes and crimes against humanity. The Rio Group countries also welcomed the continuation, at the latest session of the Assembly of States Parties, of the work of the Special Working Group on the crime of aggression. They reaffirmed their commitment to ensuring the Court's effective operation and promoting the integrity of its statute, so that it might fulfil its mandate and contribute towards the defence of the fundamental principles of the United Nations, to wit, international cooperation for development, respect of human rights, and maintenance of international peace and security.

23. **Mr. Lauber** (Switzerland) welcomed the establishment of the Court, in which the United Nations had played an important role, and expressed his delegation's confidence that States would make available to the Court the means it needed in order to fulfil its mandate efficiently and with complete independence.

24. His delegation was convinced that the Court would make the contribution expected from it by promoting respect of international humanitarian law and preventing the most serious violations of human rights. To that end, the agreement between the Court and the United Nations should be concluded as quickly as possible.

25. The simultaneous pursuit of peace and justice sometimes gave rise to problems. In periods of conflict, justice could appear as a remote ideal or even as an obstacle to peace. In the long term, however, justice was always at the service of peace. The establishment of the Court corresponded to the logic of complementarity between the pursuit of justice and the promotion of peace, from which certain recent resolutions of the Security Council seemed to diverge by implying an opposition between peace and law. It would be regrettable if States or United Nations organs compelled the States Parties to the Rome Statute to choose between their obligations under the Statute and other international obligations that were incompatible therewith.

26. His Government, for its part, undertook to do everything in its power to ensure that the Court's jurisdiction became universal, so that justice and the rule of law might prevail everywhere in the interests of the United Nations and each of its Members.

27. **Mr. Laurin** (Canada) welcomed the election of the judges, Prosecutor and Registrar of the International Criminal Court and was particularly pleased to note that the Prosecutor intended to exercise his duties in a spirit of complementarity and collaboration with States and international organizations. He also noted that the Prosecutor had decided to give priority to investigating atrocities committed in Ituri (Democratic Republic of the Congo).

28. In order to succeed in its task, the Court would have need of all its resources as well as of full commitment on the part of States, which meant that States were called upon to pay their contributions in

full at the earliest possible date and to adopt legislation enabling them to honour all their obligations without delay. His Government was willing to offer technical assistance in that respect to interested States as part of its human security programme.

29. States that still had doubts as to the usefulness of the Court should refrain from questioning its jurisdiction. To do so was harmful to the primacy of law and did not contribute towards a stable, secure and peaceful international order. If the Court's jurisdiction was clearly recognized by the State concerned, and if that State was unable or unwilling to try crimes that fell within the Court's jurisdiction, then the Court became the only hope of the victims of the crimes in question and its intervention was essential. As for the Security Council, it was imperative that its action in such cases should be unanimous and decisive, so that justice might be restored and the primacy of law respected.

30. **Mr. Meyer** (Brazil) said that remarkable progress in the establishment of the Court's institutional, administrative and operational structures had been achieved since the entry into force of the Rome Statute. His delegation believed that the Court's success in combating impunity would depend on the support in received from States Parti and the international community as a whole, public opinion being already in its favour. He reaffirmed his delegation's attachment to the integrity of the Rome Statute and the consolidation of the worldwide rule of law, and invited all States that had not yet done so to ratify or accede to the Statute as soon as possible.

31. As the Prosecutor had pointed out, the Court's effectiveness should not be judged by the number of cases that came before it; rather, an absence of trials by the Court due to the efficiency of national judicial systems would spell major success. Implementation of the Rome Statute at national level was the best way of allowing the Court to reconcile its global ambitions with its limited resources. The establishment of the Court, which had helped to enhance international law, the protection of human rights and the maintenance of international security, should be followed by initiatives in areas where progress still remained to be achieved. In that regard, his delegation supported the continuance of the work of the Special Working Group on the crime of aggression and the opening by the Prosecutor of an investigation into crimes committed in the Democratic Republic of the Congo, which might well provide the material for the Court's first trial. It reaffirmed the view that attempts to evade prosecution by the Court tended to perpetuate impunity and failed to serve the cause of justice.

32. **Mr. Mezeme Mba** (Gabon) said that the Court contributed towards the establishment of international peace and security and that the rising number of ratifications of the Rome Statute testified to the will of States to end impunity. He welcomed the election of the judges and the Prosecutor, as well as the equitable representation of geographical regions, major legal systems and both sexes in the bodies established by the Court, but expressed the wish that Africa be represented in the Prosecutor's Office by being awarded the post of a deputy prosecutor, especially since, as the Prosecutor had indicated at the second Assembly of States Parties, the first prosecutions would undoubtedly take place in the Democratic Republic of the Congo. He deplored the fact that unanimity on the subject of the Court was still lacking, as well as the failure of many States to enact domestic legislation to implement the Rome Statute, a failure which threatened to hamper complementarity and cooperation. In that connection, he looked forward to the development of programmes of assistance to States in drafting national laws designed to bring the Rome Statute into force.

33. At the domestic level, his country had initiated the process of implementing the Rome Statute by holding a seminar of national and international experts which had given rise to the establishment of a national committee mandated to draft two bills, soon to be adopted by Parliament and the Government, amending the Penal Code and the Code of Criminal Procedure. Lastly, his delegation welcomed the States Parties' adoption of a resolution recognizing the coordinating and facilitating role of the NGO Coalition for an International Criminal Court, whose efforts he saluted in the hope that its activities would extend to all States which, like his own, were in need of assistance.

34. **Mr. Bocalandro** (Argentina) said that since 1945, the year when the idea of an international criminal court was first mooted, a great deal of work had been done to achieve the adoption and eventual entry into force of the Rome Statute, the drafting and adoption of the rules governing the Court's procedure and those relating to proof, the draft agreement with the United Nations, the agreement on privileges and immunities of judges and officials of the Court, and the election of

the judges, Prosecutor and Deputy Prosecutor. The States Parties, for their part, were called upon not only to ratify the Statute but also to enact the domestic legislation necessary for its implementation – in other words, to harmonize international and internal law – and to initiate the parliamentary proceedings necessary for that purpose. Today, the Court had become operational with an expeditiousness that was all the more remarkable as, thanks to the firm political will of States but also to the participation of civil society, it constituted a major advance towards the promotion of human rights and fundamental freedoms, the rule of law, democracy and justice.

35. The Court's success now depended upon its universality as well as on the integrity and widest possible recognition of the Rome Statute. Priority attention should therefore be given to those aspects. Moreover, the Court should maintain close links with the United Nations, to which it owed its establishment, and should, as provided in the Rome Statute, entertain constructive links with the Security Council.

36. **Mr. Bliss** (Australia) said that his country firmly supported the Court on account of its dissuasive role and its contribution towards the suppression of crimes of genocide, war crimes and crimes against humanity. It therefore intended to pay its contributions in good time and called upon other States to do likewise. Noting the progress made in establishing the Court, in particular the election of the judges, Prosecutor, Deputy Prosecutor and Registrar, he welcomed the Prosecutor's remarks to the effect that the Court's effectiveness should not be judged by the number of cases tried, the object of the Court being strictly that of supplementing national judicial systems.

37. His delegation approved the Court's programme budget for the next financial year, but felt that in considering it the Assembly of States Parties had failed to take the recommendations of the Budget and Finance Committee sufficiently into account. Lastly, it hoped that an agreement on relations between the United Nations and the Court would enter into force quickly.

38. **Mr. Balestra** (San Marino) welcomed the progress in establishing the Court and, in particular, the election of its judges and senior officials, and recalled that his country had been the first in Europe and the third in the world to ratify the Statute. He was aware, however, that in order to fulfil its mandate the Court required universal recognition and the necessary financial and human resources.

39. The intention that had motivated the Court's establishment must be preserved, in particular through avoidance of any politicization of its work or any judicial lethargy that might prejudice its historic mission. Its future as a just, effective and independent institution depended on the permanent support of States. His country, for its part, could only offer its firm support to the Court – which, it was convinced, would have a dissuasive effect and would compel the perpetrators of atrocities to answer for their deeds in future – and strongly enjoin all States Members to follow its example.

40. **Mr. Takihiro Sato** (Japan) welcomed the activities undertaken since the entry into force of the Rome Statute with a view to gradually making the Court operational, but remarked that in order to enjoy the widest possible support, the Court had to be an effective and universal institution with which States could identify and in which they had confidence. In that respect, the line of action of its President and Prosecutor, which consisted in clearly and publicly presenting the Court's goals, plans and activities, was to be commended as a token of transparency not only for the States Parties but also for those, such as his own, which were not yet parties to the Statute. It was to be hoped that the same spirit of transparency would preside over the drafting of the Court's rules and that the views of States, the legal profession and civil society would be taken into consideration. Referring to the strong interest shown by the Prosecutor in the situation in Ituri (Democratic Republic of the Congo), he remarked that the first case heard by the Court, whatever it might be, would certainly attract considerable attention, as it would be indicative of the path the Court intended to follow. Japan intended to follow the Court's work with close attention and to contribute towards it to the best of its ability.

41. **Mr. Kanu** (Sierra Leone) said that considerable progress in the establishment of the Court had been achieved in 2002 and 2003, in particular with the election of the judges, Prosecutor, Deputy Prosecutor and Registrar, that of the members of the Board of Directors of the Victims Trust Fund, and the adoption of the programme budget for the Court's second financial year. He commended those attainments, which responded to the collective hope of mankind for an institution that would promote justice and the

primacy of law in international relations, and reaffirmed his country's attachment to justice and the rule of law and its unwavering support for the Court. Sierra Leone had signed the agreement on privileges and immunities of judges and officials of the Court the previous month, and had initiated procedures for the ratification of that agreement and for the incorporation of the Rome Statute in its domestic law. He welcomed the establishment of a fund designed to facilitate the participation of representatives of developing countries in meetings of the Assembly of States Parties, and expressed a strong wish for universal participation in the Court in the interests of reinforcing the fight against impunity. He urged the Secretary-General to redouble his efforts towards the conclusion of an agreement on relations between the United Nations and the Court, and hoped that Africa would be represented in the Prosecutor's Office by a Deputy Prosecutor.

42. **Ms. Geddis** (New Zealand) said that the International Criminal Court, now operational, was more than a judicial institution; as a permanent body, it could also play a dissuasive role and promote respect of international humanitarian law and human rights, thereby enhancing security, justice and the rule of law.

43. The Court's first years would be crucial and many obstacles would have to be surmounted. For the Court to be truly effective, its jurisdiction needed to be recognized as widely as possible, a goal her country undertook to promote. The Rome Statute and the Agreement on the Court's privileges and immunities would also have to be effectively implemented, which meant that States Parties had to incorporate them in their domestic legislations. New Zealand intended to discharge its obligations in that respect in the coming months by ratifying the Agreement on the privileges and immunities of judges and officials of the Court.

44. While not doubting the sincerity of some States which entertained reservations regarding the Court, her delegation recalled that the Rome Statute contained a series of guarantees against abuses and was convinced that facts would dispel any anxieties on that score. It also hoped that the United Nations would, before long, conclude an agreement governing their relations, an important aspect of which would concern respect of the prerogatives of the Security Council on the one hand and of the Court on the other, the former cooperating with the latter and refraining from any decision likely to impede its satisfactory operation. Lastly, it hoped that, should the need arise, the Security Council would not hesitate to bring a case before the Court in the interests of justice for the victims of crimes.

45. **Mr. Hmoud** (Jordan) welcomed the progress made in the establishment of the Court, which, with the election of its 18 judges, Prosecutor, Deputy Prosecutor and Registrar, had become an operational institution. Commending the role played in that process by the United Nations, he expressed the hope that the transfer of responsibilities from the Secretariat of the Organization to that of the Assembly of States Parties would take place smoothly.

46. His country attached the greatest importance to the Court's success and would cooperate with the parties and States concerned in helping the Court to discharge its duties. At the national level, his Government was completing the drafting of implementing legislation in the areas of criminal law and mutual judicial assistance, which should come before Parliament in the coming months.

47. Until the present, international criminal justice had been deficient in the sense that the international community had lacked the means to punish the most serious crimes and to prosecute their perpetrators. Despite the founding of the United Nations – whose purposes included the maintenance of peace and security and the promotion of human rights – war crimes, acts of genocide and crimes against humanity continued to be committed and remained unpunished. The two special tribunals, with powers limited in time and space, established by the Security Council to try the perpetrators of war crimes had from the first faced many difficulties in fulfilling their mandate and were not expected to complete their work before 2007. Such a limited and selective reaction on the part of the international community to crimes committed in violation of human rights and international humanitarian law encouraged the perpetrators to believe that they could escape punishment.

48. With the entry into force of the Rome Statute, the situation had changed. States Parties being legally obliged to prosecute the perpetrators of such crimes and bring them to justice before the competent national courts or refer them to the International Criminal Court. The effectiveness and universality of the Rome Statute depended not only on States Parties meeting their obligations but also on a rise in the number of States Parties. For that reason, States Parties should

redouble their efforts, in cooperation with civil society, to persuade other States to follow their example.

49. The maintenance in force of the provisions of Security Council resolution 1422 (2002) was incompatible with article 16 of the Rome Statute because it limited the Court's effectiveness and encroached upon its jurisdiction. Neither the implementation of Security Council resolutions in accordance with Chapter VII of the Charter nor the maintenance of peace justified the exoneration from criminal responsibility of perpetrators of war crimes. Furthermore, it was important that the Security Council cooperate with the Court by referring cases to it and thereby protecting it from the financial, technical and political difficulties encountered by the special tribunals.

50. Lastly, his delegation considered that the preservation of the Rome Statute was a legal responsibility incumbent upon all States Parties. The coming into existence of a powerful and effective criminal court proved that the international community had succeeded in upholding the sovereignty of law and instituting an impartial and non-politicized international criminal order.

51. **Mr. Ilnytskyi** (Ukraine) welcomed the establishment of an International Criminal Court entrusted with the prevention and suppression of serious violations of international law, such as crimes of genocide, crimes against humanity and war crimes, and took note of the election of the principal members of the Court and the setting up of a permanent secretariat by the Assembly of States Parties. He thanked the Secretary-General and the United Nations Secretariat for their support in the establishment of a permanent international criminal authority and their operational and technical assistance to the Assembly of States Parties, and hoped that the transfer of secretariat duties would be completed quickly and smoothly.

52. Recalling that the Assembly of States Parties was yet to define the crime of aggression as well as the constitutive elements of that crime and the conditions for the exercise of the Court's jurisdiction in connection with it, he said that his delegation awaited the outcome of the ongoing negotiations with interest.

53. He welcomed the report on the International Criminal Court (A/58/372), which reflected the close cooperation between the Assembly of States Parties, its permanent secretariat and the Court, and encouraged those three bodies to continue their efforts to define their internal organization with a view to conducting effective, just and transparent investigations and prosecutions. The Government of the host country, Netherlands, also deserved thanks for its assistance.

54. Lastly, he hoped that an agreement governing relations between the United Nations and the Court would soon be concluded. His country would continue to cooperate in the establishment of an independent and effective international jurisdiction and wished to see other States show the political will needed in order to do so.

55. **Mr. Thiam** (Senegal), while welcoming the establishment of the Court and the election of its members, as well as the rise in the number of States Parties which testified to growing interest in the Court, remarked that the introduction of a regime of international rule of law would, in the long run, depend on the will of States Parties to incorporate the standards set forth in the Rome Statute in their domestic legislations.

56. For its part, Senegal, which was the first State to have ratified the Statute and had worked hard to increase the number of countries accepting the Court's authority, had incorporated in its own Criminal Code the three crimes referred to in the Statute by extending their definition from the point of view of the Geneva Conventions and the Protocols relating thereto. A provision had also been devoted to breaches of international law as set forth in the following instruments: the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, the 1976 Convention on the Prohibition of Military or any other Hostile Use of Environmental Modification Techniques, the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects, and the 1997 Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction. A provision concerning hindrances to the administration of justice had also been adopted with a view to protecting the integrity of the Court. Provisions relating to the application of the principle of complementarity had been added to the Code of Criminal Procedure. In particular, it had been decided that the Dakar Court of Appeal and the Dakar Regional Court were the only two jurisdictions competent to

hear cases involving the crimes referred to in the Rome Statute, and relations of cooperation between the Court and Senegal had been clearly defined. It had also been decided that, as regards the crimes referred to in the Rome Statute, the military would henceforth come under the Code of Criminal Procedure rather than, as previously, the Code of Military Justice. Bills relating to the implementation of the Rome Statute were to be placed before Parliament for adoption shortly.

57. **Ms. Matekane** (Lesotho) noted with satisfaction that with the election and entry into service of its judges, the Court was now in a position to dispense credible and effective justice, thanks in large part to many years of untiring efforts to end the impunity of serious crimes of international impact by the United Nations, and in particular the Security Council, which had established special tribunals for Rwanda, the former Yugoslavia and Sierra Leone. She called upon all States Members of the United Nations that had not already done so to become parties to the Rome Statute and invited the States Parties to the Statute to take the necessary steps at national level with a view to effective cooperation with the Court. She also encouraged the Security Council and other United Nations organs to explore ways of enhancing their cooperation with the Court and the Assembly of States Parties and stressed the need to establish a balanced and constructive relationship between the United Nations and the Court in order to preserve the latter's independence. In her view, the International Criminal Court should continue to appear on the agenda of United Nations bodies, including the Sixth Committee.

58. All Member States should participate on an equal footing in the debate on the subject of the definition of the crime of aggression with a view to reaching consensus on that important issue. She commended the NGO Coalition for an International Criminal Court for its efforts in connection with the establishment of the Court and welcomed the technical assistance furnished to her country in discharging the obligations deriving from its accession to the Rome Statute. In conclusion, she welcomed the adoption of a resolution on the establishment of a special fund to finance the participation of the least developed countries in the work of Assemblies of States Parties.

59. **Mr. Awanbar** (Nigeria) noted with satisfaction that the Court had finally become operational with the election of its judges and senior officers and the conclusion of the work of the second session of the Assembly of States Parties. Thanking the United Nations Secretariat, and particularly the Codification Division of the Office of Legal Affairs, for their efforts in that connection, he enjoined them to continue offering their support so that the transfer of secretariat duties might take place in an orderly fashion, and invited the Committee to provide the necessary assistance to facilitate the conclusion of the agreement on relations between the United Nations and the Court.

60. Noting that the rising number of States Parties to the Rome Statute testified to greater confidence on the part of the international community in the Court's ability to end impunity of crimes against humanity, he said that his Government recognized that the Court's jurisdiction was non-retroactive and extended only to crimes committed after the entry into force of the Rome Statute. His Government also appreciated that the Court could exercise its jurisdiction only where the national jurisdiction could not or was unwilling to try the crimes referred to in article 17 of the Statute, and was convinced of the existence of guarantees to protect legitimate State interests.

61. His delegation wished once more to urge the Assembly of States Parties to elect a national of the African region to the post of Second Deputy Prosecutor in view of the need to ensure a balanced geographical representation, as well as of the fact that the first cases before the Court were to concern that region.

62. Nigeria intended to continue its cooperation with other countries towards facilitating the work of the Court. He called upon States that had not already done so to become parties to the Rome Statute so as to ensure its universal recognition and implementation, and invited all States to enhance their cooperation with the Court and all other bodies concerned.

63. **Mr. Peersman** (Netherlands), associating himself fully with the statement made by Italy on behalf of the European Union, said that the ongoing debate testified to progress achieved in the establishment of the Court, which was now in a position to hear its first cases, a fact particularly welcome to him as the representative of the host country.

64. Turning to the question of the forthcoming draft resolution on the subject of the Court, he said that there were three points to be dealt with. First, given the close links that must necessarily exist between the Court and the Assembly of States Parties, it was envisaged that the Assembly should meet whenever possible at The

Hague, the city in which the Court had its seat. Since certain delegations wished the debate on the crime of aggression to be held in New York, it was desirable that the draft resolution should expressly mention the possibility of future meetings of the Special Working Group on the crime of aggression being held at Headquarters. Second, it was necessary to ensure that the transfer of secretariat tasks took place gradually and in an orderly fashion, so that the newly created permanent secretariat set up by the Assembly of States Parties might discharge its duties efficiently and the Court's independence be maintained. Lastly, cooperation and coordination with the United Nations, essential to the satisfactory operation of the Court, had to be founded upon a legal basis, and it was therefore important that the draft resolution invite the Secretary-General to take steps to facilitate the earliest possible conclusion of an agreement governing relations between the United Nations and the Court. He hoped that the draft resolution he intended to submit would be adopted by consensus. He called upon countries desirous of preserving the integrity, independence and effectiveness of the Court, so that impunity for the most serious crimes might at last be ended, to support the draft resolution and recommended the continuance of dialogue with States still hesitating to join the Court.

65. **Mr. Paclisanu** (International Committee of the Red Cross) said that his organization knew from experience that impunity of war crimes, crimes against humanity and crimes of genocide was a barrier to reconciliation and thus served to perpetuate conflicts. Conversely, where the parties to a conflict respected the principles of humanitarian law, reconciliation was facilitated. The entry into force of the Rome Statute establishing the International Criminal Court bore witness to the universal recognition of the fact that war crimes, crimes against humanity and crimes of genocide were a matter of concern to all States and the international community as a whole. It would be recalled that it was Gustave Moynier, one of the founders of the Red Cross, who had first proposed the establishment of such a jurisdiction and that the International Committee of the Red Cross (ICRC) had had occasion to provide technical assistance and advice during the negotiations on the Rome Statute, the constituent elements of crimes and the regulations governing procedure and proof, in particular as regards war crimes and judicial guarantees applicable in situations of armed conflict.

66. Reaffirming the principle of complementarity of the Court and national jurisdictions, he said that the ICRC advisory service on international humanitarian law was at the disposal of States needing assistance with the ratification of instruments of international humanitarian law, including the Rome Statute, and their implementation at national level. He also pointed out that the enactment of laws pronouncing the crimes defined in the Rome Statute to be offences did not relieve States parties to other international instruments, in particular the Geneva Conventions of 1949 and the Hague Convention of 1954, the 1980 Conventional Weapons Convention, the 1993 Chemical Weapons Convention and the Ottawa Convention of 1997, from the additional obligations assumed by them under those instruments. States parties to the Geneva Conventions and the Protocols relating thereto and States parties to the Hague Convention of 1954 should recall that they were obliged to search for persons alleged to have committed, or to have ordered to be committed, grave breaches of universal legal instruments, to bring such persons before their own courts or to hand them over for trial to another High Contracting Party. For States parties to the Protocol Additional to the Geneva Conventions, that obligation extended to breaches resulting from an omission contrary to the duty to act. ICRC stood ready to assist States wishing to ratify those or other instruments or to discharge the obligations resulting therefrom.

Agenda item 154: International convention against the reproductive cloning of human beings (A/58/73, A/C.6/58/L.2, A/C.6/58/L.8 and A/C.6/58/L.9)

Draft resolution A/C.6/58/L.2: International convention against the reproductive cloning of human beings

67. **Mr. Stagno Ugarte** (Costa Rica) introduced the draft resolution on behalf of its 56 sponsors, namely: Albania, Angola, Antigua and Barbuda, Benin, Burundi, Chile, Costa Rica, Côte d'Ivoire, Democratic Republic of the Congo, Dominica, Dominican Republic, El Salvador, Ecuador, Equatorial Guinea, Eritrea, Ethiopia, Fiji, Gambia, Georgia, Grenada, Haiti, Honduras, Italy, Kazakhstan, Kenya, Kyrgyzstan, Lesotho, Madagascar, Marshall Islands, Micronesia (Federal States of), Nauru, Nicaragua, Nigeria, Palau, Panama, Paraguay, Philippines, Portugal, Rwanda, San Marino, Santa Lucia, Saint Kitts and Nevis, Saint

Vincent and the Grenadines, Sierra Leone, Spain, Suriname, Tajikistan, Timor-Leste, Turkmenistan, Tuvalu, Uganda, United Republic of Tanzania, United States of America, Uzbekistan, Vanuatu and Zambia. He hoped that the draft would enjoy the widest possible support, since in view of the importance and urgency of the debate on human cloning it was essential that the General Assembly – and not UNESCO, as some had suggested – should embark as soon as possible – and not in a year's time, as had been suggested by some others – upon negotiations towards the prohibition of human cloning in all its forms.

68. Referring more particularly to so-called "therapeutic" cloning, welcomed as a panacea in some quarters, he pointed out that the affirmation was not corroborated by any research; on the contrary, all animal experiments to date showed that the technique involved insurmountable difficulties which stood in the way of its utilisation on human beings. Furthermore, its success rate was extremely low and its human cost (in terms of the number of ovules used, the risks to women donors, etc.) prohibitive. From the philosophical and moral points of view, the technique, based as it was on the creation of human embryos for experimental purposes and their eventual destruction, ran counter to the most elementary standards of human rights law. The prohibition of human cloning would not obstruct scientific progress but would, on the contrary, encourage stem cell research – the results of which had so far been highly promising – and the continuation of animal tests. Professor Prentice, renowned research scientist and expert in bioethics, would make a statement on the scientific and ethical aspects of the question.

69. **Professor Prentic** (research scientist and expert in bioethics) said that the cloning of human beings was based on the same techniques and produced the same results whether its purpose was therapeutic or reproductive: in both cases, a cloned embryo, indistinguishable from an embryo obtained by fecundation, was created. The only difference between the two types of cloning was the final use made of the cloned embryo: in the case of reproductive cloning, the embryo was implanted and in the case of therapeutic cloning it was destroyed after the removal of stem cells. In both cases, the losses of ovules and embryos were enormous, and nearly all of the rare surviving embryos showed anomalies. Cloning also involved immense risks, both physiological and psychological, for the women donors and birth mothers.

70. As regards therapeutic cloning, he recalled that the technique had not, to date, yielded any result worthy of receiving mention in a scientific publication. In point of fact, only research on adult – and not embryonic – somatic animal stem cells had led to real progress in the treatment of certain diseases of genetic origin and even to some successes in the treatment of human patients. Therapeutic cloning was therefore not justified from the scientific or medical points of view. Moreover, authorizing it would amount to authorizing the production of cloned embryos without having any means whatever of preventing their uterine implantation, which would make it impossible to verify compliance with a potential ban on reproductive cloning. If the goal was to prevent reproductive cloning – which was universally condemned – the production of cloned embryos for any purpose whatsoever, including therapeutic uses, should be prohibited.

71. **Ms. Morgan-Moss** (Panama), subscribing unreservedly to all the scientific, ethical and moral arguments advanced on the subject of the cloning of human beings, reaffirmed her support for draft resolution A/C.6/58/L.2, of which her country was a sponsor, and strongly urged all Committee members to express their support for the draft.

Draft resolution A/C.6/58/L.8: International convention against the reproductive cloning of human beings

72. **Mr. Pecsteen** (Belgium), introducing draft resolution A/C.6/58/L.8, said that the draft, which was based on ideas originating with the German and French delegations, was being submitted in a spirit of compromise and realism in order to facilitate the rapid adoption of a single convention dealing with both reproductive and therapeutic cloning in a manner that respected divergences of opinion on the subject but refrained from embracing either point of view. While stressing the urgency of preventing attempts at reproductive cloning of human beings, it left States free to choose between two solutions, that of completely banning such attempts and that of imposing a moratorium upon them or placing them under strict regulation. In that way, the draft did not oblige any State to renounce its convictions and sent a unanimous

message to the world scientific community concerning the totally inadmissible nature of the reproductive cloning of human beings. He urged Committee members not to put the draft resolution to the vote, since a convention adopted by vote would lack legitimacy and would stand little chance of being implemented by States. Consensus had to prevail.

73. **Mr. Kiboino** (Kenya) said that he was in favour of scientific medical research aimed at improving the living conditions of mankind but against research that was inconsistent with the dignity and integrity of human beings. The end never justified the means. The cloning of human beings, whether for therapeutic or for reproductive ends, was based upon the creation and utilization of human embryos, which was unacceptable to his delegation.

74. Moreover, research on adult stem cells – which raised no moral or ethical problems – was extremely promising, inter alia for regenerative medicine, and therefore deserved to be developed as an alternative to research on embryonic stem cells. Furthermore, therapeutic cloning involved unacceptable risks for human beings in view of its very high failure rate and of problems arising in connection with animal tests. An additional risk was that therapeutic cloning would leave the way clear for reproductive cloning – which was universally condemned – because it used the same embryo production techniques, the only difference being the purpose of the operation. A complete ban on human cloning in all its forms was the only effective solution. As for the argument of diversity employed to justify practices of that kind, certain values, such as the dignity of the human being, had a universal nature that transcended cultural differences.

75. For those reasons, his delegation supported draft resolution A/C.6/58/L.2, of which it was a sponsor, as well as the draft international convention proposed in document A/58/73. It welcomed the general consensus on the total prohibition of reproductive cloning which, it hoped, would be extended to cloning for therapeutic purposes. While willing to show flexibility, it intended to keep faith with the goal of a complete ban on all forms of human cloning.

76. **Ms. Ferrari** (Saint Vincent and the Grenadines) said that her delegation had joined the sponsors of draft resolution A/C.6/58/L.2 because it was in favour of a total prohibition of all cloning of human beings, whether for therapeutic or for reproductive purposes. While respecting the convictions of other States which might be different from her own, she was firmly convinced that the dignity of the human being was sacred from the very first stages of life until its end, and deemed it absolutely unacceptable that a human life, albeit an embryonic one, should be created for the sole purpose of serving for scientific experiments and being destroyed thereafter. She urged other delegations to support the draft resolution with a view to advancing towards the adoption of a convention prohibiting human cloning.

The meeting rose at 6 p.m.